IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISC. APPLICATIONS NO. 248 AND 249 OF 2004.

CRIMINAL MISC. APPLICATION NO. 248/04.

Shri Kishan Gopal Jalgar,
present in Judicial Lock up,
duly represented by his father
Shri Gopal R. Jalgar,
Residing at Behind Kapileshwar Temple,
Belgaum, Karnataka. ... Applicant.

Versus

1. S T A T E
   Represented by Public Prosecutor,
   Panaji, Goa.

2. Police Sub Inspector,
   Pernem Police Station,
   Pernem, Goa. ... Respondents.

CRIMINAL MISC. APPLICATION NO. 249/04.

Shri Shankar Raju Naidu,
present in Judicial Lock-Up,
duly represented by his father
Shri Raju Nagesh Naidu,
residing at Behind Kapileshwar Temple,
Belgaum, Karnataka. ... Applicant.

Versus

1. S T A T E
   Represented by Public Prosecutor,
   Panaji, Goa.

2. Police Sub-Inspector,
   Pernem Police Station,
   Pernem, Goa. ... Respondents.

Shri J.P. Mulgaonkar, Advocate for the Applicants.

Shri S.N. Sardessai, Public Prosecutor for the Respondents.

CORAM: N. A. BRITTO, J.

DATE: 14th January, 2005.

ORAL ORDER :

The applicants herein are accused in Pernem P.S. Crime No. 67/2004, whose applications for bail have been rejected by Order dated 17/11/2004 of the learned Addl. Sessions Judge, Mapusa, in-charge of the Sessions Court, Panaji, and who are now before this Court seeking bail in the said Crime. Charge-sheet against the applicants and others has already been filed on 12th instant under No. 3/2005.

2. The accused Shankar Naidu was arrested on 15.10.04 and the accused Kishan Gopal Jalgar was arrested on 16.10.04 and since then both of them have been in custody. One of the accused is stated to be still absconding while the remaining five accused are stated to be in custody.

3. The incident took place on 22.5.04 at about 21.20 hrs. at Amerem, Pernem. The F.I.R. was filed on 23.5.04 by Shri Prasad Uttam Kanolkar. The allegation against all the accused is that on the said day, time and place, all the accused in furtherance of common intention, broke the front glass of the Tempo bearing No.GA-O1-Z-3306 with dandas in which the said Prasad Uttam Kanolkar was going and assaulted the said Prasad Uttam Kanolkar and three other occupants of the said Tempo and robbed cash of Rs. 52,350/-, as the said

Prasad Uttam Kanolkar was proceeding to Kudal for collecting milk packets in the said Tempo.

4. The learned Addl. Sessions Judge rejected the bail applications of the accused because she found that the offences allegedly committed by the accused was of dacoity under S.395 I.P.C. which entail punishment of imprisonment for life or rigorous imprisonment for a term which extends to ten years and also fine. The learned Addl. Sessions Judge also found that the possibility that the accused may tamper with the witnesses could not be ruled out. Another factor which weighed in the mind of the learned Addl. Sessions Judge is that the accused may scuttle the investigation which ground, no longer subsists as the investigation as far as the present accused are concerned have been completed and a charge-sheet has been filed. The learned Addl. Sessions Judge also noted that after the commission of the offence, the accused herein had gone to Chennai and Bangalore to avoid their arrest. However, there is no dispute that the present accused have been arrested from Belgaum which is stated to be the place of their permanent residence.

5. Shri Mulgaonkar, the learned counsel of the accused herein has submitted that the present accused are from the age group of about 20 to 25 years who have no previous criminal antecedents and were allegedly involved in an isolated incident at the time when they had come to this State to attend a wedding. Shri Mulgaonkar next submits that though an offence of dacoity is serious, it is not heinous so as to deprive the accused of bail after investigations have been completed. Shri Mulgaonkar has also submitted that bail could not

be denied to the present accused on the ground that they are not residents of this State and that by imposing appropriate conditions their presence could be secured at the trial and if necessary, by imposing a condition that the accused provide a local surety.

6. Shri Sardessai, the learned Public Prosecutor, on the other hand submits that the accused who are known dacoits, cannot have a permanent place of residence and it appears that they are members of a well known gang of dacoits. On this aspect, I must hasten to add that nothing of that sort has been stated in the reply filed on behalf of the Respondent-State. Shri Sardessai has further submitted that the offences committed by the accused are serious and as rightly observed by the learned Addl. Sessions Court, there is a possibility that the accused will interfere with the witnesses. Shri Sardessai has placed reliance on the cases of **Chaman Lal v. State of U.P. & Anr. (2004 All MR (Cri) 3167)** and **State of Maharashtra V. Sitaram Popal Vetal & Anr. (2004 ALL MR (Cri) 3185)**.

7. As already stated, a charge-sheet has also been filed in the said Crime No.67/04, after the completion of the investigation. The fact that one of the accused has been absconding since the date of commission of offence from 23.5.04, cannot be a good ground to deny bail to the accused herein.

8. The grant of bail in a non-bailable case is always a matter of discretion with the Courts and while exercising the said discretion, the Courts are called upon to consider several factors. The foremost amongst them is the

seriousness of the offence. Some of the other factors which are required to be considered is the punishment assigned by law and nature of evidence collected. Another factor is whether the Courts of justice would be thwarted by the accused who seeks the jurisdiction of the Court to be freed on bail. Some of these factors which are required to be considered have been reiterated by the Hon'ble Supreme Court in the case of Chaman Lal v. State of U.P. (supra) . In this case the Hon'ble Supreme Court has stated that it is necessary for the Courts dealing with the applications for bail to consider among other circumstances, the following factors :-

1. The nature of accusation and the severity of punishments in case of conviction and the nature of supporting evidence;
2. Reasonable apprehension of tampering of the witness or apprehension of thereat to the complainant;
3. Prima facie satisfaction of the Court in support of the charge.

9. The Hon'ble Supreme Court in the above case, has further stated that though a conclusive finding in regard to the points urged by the parties is not expected of the Court considering the bail application, yet giving reasons is different from discussing merits or demerits. As noted above, at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merits of the case has not to be undertaken. But that does not mean that while granting bail some reasons for prima facie concluding why bail was being granted is not required to be indicated.

10. Section 437 of Cr.P.C., 1973 provides in what cases bail is to be taken in

non-bailable offences, and, it inter alia provides that a person accused or suspected of commission of any non-bailable offence may not be released on bail if such person is involved in an offence which is punishable with death or imprisonment for life. It is now well settled that the conditions provided in sub-section (1) of Section 437 of the Code of Criminal Procedure has got to be read into Section 439 of the said Code whilst considering the applications for bail.

11. As far as the evidence collected against the accused herein, it appears that both the accused have been identified at a Test Identification Parade held in the course of investigations. Not only that, their presence together with the remaining accused has been established in a guest house. Moreover, some rubber stamped notes have been recovered at their instance.

12. Admittedly an offence of dacoity under S.395 I.P.C. is punishable with imprisonment for life or rigorous imprisonment for ten years and fine. It is certainly not an offence which could be described being of highest magnitude for which punishment assigned by law is of extreme severity. No doubt it is serious, but it is certainly less serious than the offence for which bail could be denied in terms of Section 437 of the Code of Criminal Procedure.

13. As far as the apprehension that the accused may tamper with the witnesses appears to be more imaginary than real as the first informant and the accused are from two different localities and not connected with one another in any manner whatsoever. The availability of the accused for trial is certainly

one of the conditions which is required to be weighed at the time of granting of bail. However, bail could not be denied to the accused herein only because they have no permanent residence in this State when otherwise they have been shown to be residents of Belgaum.

14. In my view, considering the overall facts and circumstances of this case, the accused are certainly entitled to be admitted to bail. The applications filed by them are therefore granted. Each of the accused shall be released on bail upon execution of a Bond of Rs.15,000/- with two sureties in the like amount to the satisfaction of the learned Addl. Sessions Judge, Mapusa, one of the sure ties being a resident within the State of Goa. The accused are also required to file a detailed address of their residence at Belgaum before the learned Addl. Sessions Judge, Mapusa as one of the conditions for the grant of bail. The accused are further directed not to leave the district of Belgaum (except for attending the Courts in North Goa District) without obtaining prior permission of the Court before which their case will be pending in this State.

N. A. BRITTO, J.

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